

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Hearing Officer Notice soliciting comments on)	
Whether the Department of Telecommunications)	D.T.E. 03-45
And Energy should open and investigation to)	
Establish an instate Universal Service Fund)	

REPLY COMMENTS OF AT&T WIRELESS PCS, LLC

AT&T Wireless PCS, LLC ("AT&T Wireless") hereby respectfully submits reply comments to the Hearing Office Notice, issued May 29, 2003, regarding a petition filed by Richmond Connections, d/b/a Richmond Network ("Richmond") requesting that the Massachusetts Department of Telecommunications and Energy ("Department") institute a proceeding to establish a state Universal Service Fund ("SUSF"). The Notice seeks comment on whether the Department has sufficient statutory authority under existing federal and state statutes to establish a SUSF and whether the Department should open a formal docket to investigate the establishment of an SUSF in the Commonwealth of Massachusetts. As stated herein, AT&T Wireless concurs with the comments filed by Verizon Massachusetts, Verizon Wireless and Sprint Communications Company, L.P., that the Department does not have the requisite authority to establish a SUSF. In particular AT&T Wireless respectfully submits that the Department does not have statutory authority to require wireless carriers to contribute to a fund. Furthermore, AT&T Wireless agrees with several of the commenters that initiating an investigation into this matter is unnecessary.

AT&T Wireless agrees with several commenters that the Commonwealth of Massachusetts does not have explicit authority to establish a SUSF. ¹ The Federal

¹ Sprint Comments at p. 3, Verizon Wireless' Comments at p 2, Verizon Massachusetts' Comments at p. 3.

Communications Act does not grant the states with the requisite authority to establish as SUSF. Instead, the Communications Act, as amended by the Telecommunications Act of 1996, grants states authority to adopt their own universal services laws that are not inconsistent with the federal laws:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service...A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.²

This language clarifies that the states are not preempted by the Communications Act from establishing their own universal service funds even though there is a federal universal service fund. Nevertheless, states can only establish a state universal service fund if the requisite state statutes are in place. As noted by Verizon Wireless other states have evaluated establishing state universal service funds and determined that they needed additional authority to establish the fund.³

Furthermore, AT&T Wireless submits that should the Department choose to initiate an investigation of any kind into the development of a SUSF in the Commonwealth of Massachusetts, wireless carriers, or rather, Commercial Mobile Radio Carriers (“CMRS”) providers should not be included in any time of USF fund.⁴

Last, Richmond’s petition does not address the desire to use any potential universal services funds to deploy or support a network to serve customers in remotes

² 47 U.S.C. Section 254(f)

³ Comments of Verizon Wireless pp. 5-6. A USF was instituted in Maine though the state had express statutory authority to do so. (Sprint Comments at p. 3)

⁴ In its Comments AT&T Communications of New England, Inc. states that should the Department initiate an investigation into USF it would be acting under its ratemaking authority (AT&T Comments at p. 7). Therefore, even under AT&T’s rationale the Department does not have the requisite authority to require wireless carriers to contribute to such a fund as the Department does not regulate CMRS carriers with

areas in the Commonwealth. AT&T Wireless concurs with comments of Verizon Wireless that “there are no statutes that authorize the DTE or any other Commonwealth agency to require contributions of any kind from carriers or their customers to subsidize other carriers, services or customers.”⁵ Richmond’s petition does not show a need for the development of a USF and therefore should be denied thereby negating the need for further investigation.

For the forgoing reasons, AT&T Wireless strongly supports the comments of the majority of commenters that the Department lacks the necessary jurisdiction to institute a universal service fund in the Commonwealth of Massachusetts and that an further investigation in not needed.

Respectfully submitted,

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respect to rates and entry. See 47 U.S.C 332(c)(3) and Re: Regulation of Commercial Mobile Radio Services, D.P.U. 94-73.

⁵ Verizon Comments p.3